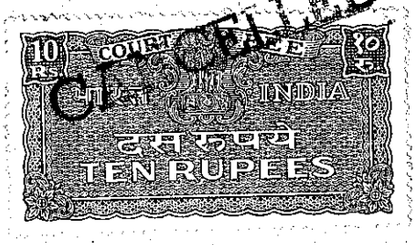
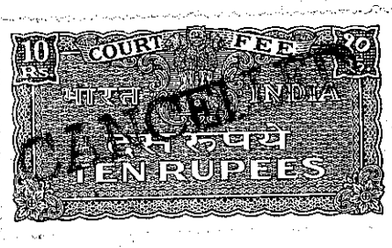





(5)

BEFORE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

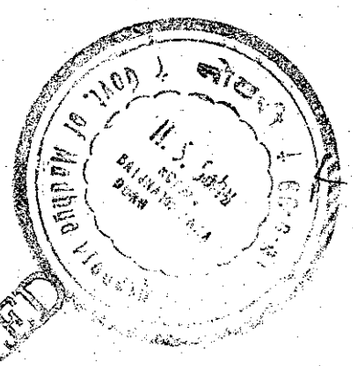
Writ Petition No. 71 2001.

**Petitioner** : PRABHAKAR MOHITKAR
S/o Shri Vithoba Mohitkar
aged about 67 years,
R/O 259/3 R.M.
Railway Colony,
Raipur (Chhattisgarh).

P. R. No. ..... Presented by Shri ..... dated 11-1-...

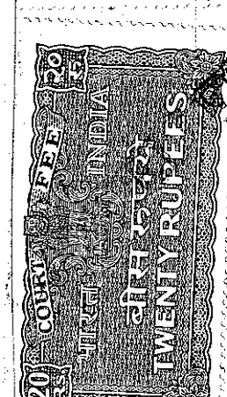
**Versus**

**Respondents** : 1. UNION OF INDIA
through - Secretary
Ministry of Railway
Rail Bhawan
NEW DELHI



2. THE GENERAL MANAGER
South Eastern Railway
Garden Reach
CALCUTTA (W.B.)

3. THE ASSISTANT LABOUR COMMISSIONER(Central)
AND CONCILLIATION OFFICER
Ministry of Labour
Govt. of India
RAIPUR (Chhattisgarh).




4. The Chief Engineer (Construction)
South Eastern Railway
Raipur (Chhattisgarh).

contd...2

5. The District Engineer (Construction)
South Eastern Railway
Raipur (Chhattisgarh).

6. The Assistant Engineer, (Construction)
And Enquiry Officer,
South Eastern Railway
Raipur (Chhattisgarh).

**PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.**

(129)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 71 of 2001

Petitioner: Prabhakar Mohitkar

Versus

Respondents: Union of India and others

**Single Bench**: Hon'ble Mr. Justice **Satish K. Agnihotri**

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Present: Shri V.G. Tamaskar, Advocate for the petitioner.
None appears for the respondents.

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ORDER

(Passed on 8th day of December, 2006)

The following order of the Court is passed by **Satish K. Agnihotri, J.**

1. The petitioner was appointed as clerk at Balod, District Durg (C.G.) in South Eastern Railway Construction Division. The petitioner was removed from the services by order dated 2.8.1976(Annexure P-19).

2. Being aggrieved, the petitioner filed an application before the Assistant Labour Commissioner (Central) and Conciliation Officer, Ministry of Labour, Government of India, Raipur (C.G.)/respondent No. 3. The respondent No. 3, by his order dated 18.7.2000 (Annexure P-23), refused to refer the dispute for adjudication, on the ground of delay.

3. The identical issue came into consideration before this Court in the case of **Ramkumar Suryavanshi Vs. State of Chhattisgarh**

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**and others**[1], wherein this Court held that prejudice caused to other side on account of delay and/or whether the delay was fatal, can be considered only in the process of adjudication before the Labour Court. This case is squarely covered by the decision of this Court in the case of Ramkumar Suryavanshi Vs. State of Chhattisgarh and others (Supra).

4. In the case of **Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and another**[2], the Supreme Court in para 10 observed thus:-

> "10.....the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour Court or Board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....."

This dictum was followed subsequently in the cases of **Gurmail Singh v. Principal, Govt. College of Education and others**[3] and **S.M. Nilajkar and others v. Telecom District Manager, Karnataka**[4].

5. Accordingly, this petition is allowed and the respondent No. 3 is directed to refer the dispute within a period of four weeks from

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the date of receipt of a copy of this order, to the Central Government Industrial Tribunal for adjudication. No order as to costs.

Certified copy as per Rules.

Sd/-
Satish K. Agnihotri
Judge

Subhash

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1. (2006 L.T. (CG) 135)
2. (1999) 6 SC 82.
3. (2000) 9 SCC 496
4. (2003) 4 SCC 27